

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of the Petition of)	
)	
The United Power Line Council)	
)	WC Docket No. 06-10
For a Declaratory Ruling Regarding the)	
Classification of Broadband Over Power)	
Line Internet Access Service As)	
An Information Service)	
_____)	

COMMENTS OF THE UNITED POWER LINE COUNCIL

The United Power Line Council hereby replies to comments on its Petition for Declaratory Ruling in the above-referenced proceeding.¹ The record generally supports classifying BPL-enabled Internet access service as an information service consistent with the regulatory classification of cable modem and DSL services. The comments also reflect that the Commission can and should make this declaratory ruling based on the existing record. BPL-enabled Internet access service is a functionally integrated finished service that inextricably combines data transport with information processing capabilities, and therefore is an information service. Moreover, classifying BPL-enabled

¹ Pleading Cycle Established for Comments on United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband Over Power Line Internet Access Service as an Information Service, Public Notice, WC Docket No. 06-10, DA 06-49 (Jan. 11, 2006).

Internet access service as an information service will promote public policy by providing regulatory certainty that will encourage investment and innovation in new technologies, which will in turn promote broadband deployment. Classifying BPL-enabled Internet access service as an information service also will promote broadband competition by providing a level playing field for similar broadband services.

I. BPL-ENABLED INTERNET ACCESS SERVICE IS AN INTERSTATE INFORMATION SERVICE

In its Petition for Declaratory Ruling, the UPLC explained that BPL Internet access service is an information service for the same reasons that cable modem and DSL services are information services. Comments submitted on the record support this conclusion.

“TIA believes the only possible determination regarding the classification of BPL-enabled Internet access service is a finding that it is an information service under the Communications Act, as amended. Broadband Internet access provided over BPL is a service that clearly is functionally and technically comparable to cable modem and wireline broadband Internet access services; therefore, its network providers, technology suppliers, investors and consumers deserve the same regulatory clarity now enjoyed by the latter.”²

San Diego Gas & Electric, which has conducted a BPL pilot since September, 2005, agrees that BPL-enabled Internet access service is the “functional equivalent to DSL and cable modem services” and that

² Comments of the Telecommunications Industry Association in WC Docket No. 06-10 at 2-3 (filed Feb. 10, 2006).

it provides the same capabilities for “generating, acquiring, storing, transforming, processing, retrieving, utilizing or making information available via telecommunications.”³ Similarly, FirstCom, which has been evaluating BPL over the last eighteen months and which plans to launch BPL commercially this year, stated that “BPL is like cable modem and DSL-based wireline broadband services in all material respects.”⁴

Several comments also particularly emphasize that BPL-enabled Internet access service is an interstate service. FirstCom urges the Commission to confirm that BPL-enabled Internet access services are inherently interstate services, consistent with Commission precedent, and recognizing that this clarification “will provide much needed certainty as states address the legal and regulatory issues attendant to BPL deployment.”⁵ San Diego Gas & Electric Company also agrees that BPL-enabled Internet access service is an interstate service because “traffic is routed over the Internet, like cable modem and DSL.”⁶

³ Comments of San Diego Gas & Electric Company in WC Docket No. 06-10 at 2-3, *citing* 47 U.S.C. 153(20)(filed Feb. 10, 2006).

⁴ Comments of First Communications, LLC on Petition for Declaratory Ruling in WC Docket No. 06-10 at 4 (filed Feb. 10, 2006).

⁵ *Id.* at 8, *citing* SB5, 79th Leg., 2d Called Session (Texas 2005).

⁶ Comments of San Diego Gas & Electric Company at 3.

II. BPL-DOES NOT INCLUDE A SEPARATE TRANSMISSION COMPONENT

In addition, FirstCom asks the Commission to make an explicit declaration that BPL-enabled Internet access services do not contain a separate transmission component.⁷ This would clarify that “*how* BPL services are deployed is left up to the electric utility over whose lines the service is transmitted, [and that] electric utilities (or their BPL operators) are not required to offer transmission capacity separately to others.”⁸ FirstCom explains that the “successful deployment and operation of BPL systems must be carefully managed to ensure that, whatever happens with broadband service, the deployment does not in any way interfere with the delivery of electricity to consumers or degrade the reliability of electric power.”⁹ The UPLC supports FirstCom’s request, which will provide utilities and BPL operators the flexibility they need to employ various business models for the successful deployment of BPL and to maintain electric service reliability.

III. COMMENTS IN OPPOSITION ARE IRRELEVANT OR UNAVAILABLE.

Other comments seeking conditions on or opposing classifying BPL-enabled Internet access service as an interstate information

⁷ Comments of First Communications, LLC on Petition for Declaratory Ruling at 9.

⁸ *Id.*, *emphasis in original*.

⁹ *Id.* at 9.

service raise issues that are generally irrelevant or which otherwise fail to counter Commission precedent and public policy, which support classifying BPL as an information service.. Proponents of these suggestions do not have any serious objection to the classification of BPL as an information service and some in fact suggest such a classification is appropriate.¹⁰

Issues regarding technical compatibility with equipment that is collocated on utility poles or in the customer premises are beyond the scope of this proceeding, and have already been considered by the Commission in the BPL rulemaking proceeding.¹¹ Similarly, issues related to pole attachments are irrelevant to the classification of BPL-enabled Internet access services, and were already considered in the

¹⁰ *See, e.g.*, Joint Comments of Florida Cable & Telecommunications Association, Cable Television Association of Georgia, Cable Telecommunications Association of Maryland, Delaware and the District of Columbia, California Cable & Telecommunications Association, South Carolina Cable Television Association, and Alabama Cable Telecommunications Association (filed Feb. 10, 2006) (“Cable Commenters”) at 7 (“...classifying BPL as an information service would be consistent with the Commission’s classifications of cable modem and DSL services...”); Comments of Panasonic at 1 (filed Feb. 10, 2006) (“Panasonic”).

¹¹ *See* Comments of Virtual Hipster Corporation in WC Docket No. 06-10 (filed Feb. 10, 2006); *and* Comments of Panasonic Corporation of North America in Support of the United Power Line Council Petition for Declaratory Ruling in WC Docket No. 06-10 (filed Feb. 10, 2006). The issue of compatibility with collocated equipment on utility poles was raised in the BPL proceeding by various parties. *See e.g.* Comments of BellSouth in ET Docket No. 04-37 at 6 (filed May 3, 2004)(raising theoretical concerns about interference to telephone services); *and see* Comments of Verizon at 2-3 (filed May 3, 2004)(raising general concerns about potential interference to VDSL services). The issue of coexistence with in premises equipment was also raised in the BPL proceeding by Panasonic. *See* Letter from Bruce Turnbull, counsel for Panasonic to Marlene Dortch, FCC Secretary in ET Docket No. 04-37 (filed June 16, 2004).

BPL rulemaking proceeding.¹² Finally, issues with respect to cross subsidization and competitive viability of BPL are likewise irrelevant, while issues related to universal service and access charges are beyond the scope of this proceeding.¹³ For these reasons, the Commission should ignore these comments.

Meanwhile, certain parties representing state interests characterize UPLC's petition as premature, and seek to delay declaratory relief.¹⁴ The UPLC respectfully disagrees. As FirstCom stated in its comments, "the time is ripe for the Commission to classify BPL services."¹⁵ There are several large scale commercial BPL deployments, and regulatory clarity is needed to encourage this technology's continued growth and ability to compete with cable modem and DSL services. The Commission has already classified

¹² See Comments of the Florida Cable Television Association *et al.* in WC Docket No. 06-10 (filed Feb. 10, 2006). *And see* Comments of NextG Networks in WC Docket No. 06-10 (filed Feb. 10, 2006) The issue of pole attachment regulation related to BPL was raised in the BPL proceeding by some of the same parties that are raising the issue in response to UPLC's petition. See *e.g.* Comments of Joint Cable Operators in ET Docket No. 04-37 (filed June 22, 2004); *and see* Comments of Joint Cable Operators in ET Docket No. 03-104 (filed July 7, 2003).

¹³ Comments of National Telecommunications Cooperative Association in WC Docket No. 06-10 at 3-9 (filed Feb. 10, 2006). The issue of universal service and access charges for IP-enabled services is the subject of a separate proceeding. See *IP Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd. 4863 (2004)

¹⁴ Comments of the New Jersey Ratepayer Division of the Advocate in WC Docket No. 06-10 (filed Feb. 10, 2006); *and* Comments of the Pennsylvania Public Utility Commission in WC Docket No. 06-10 (filed Feb. 10, 2006).

¹⁵ Comments of First Communications, LLC at 7 (filed Feb. 10, 2006).

cable modem and DSL services, and has established a policy to classify like services (including BPL) in a similar manner. Finally, there is ample support on the record in this proceeding and others for classifying BPL-enabled Internet access service as an information service. For all these reasons, the Commission should not delay declaring that BPL-enabled Internet access service is an information service, especially given its previous quick actions in support of other broadband technologies..

The comments on the record overwhelmingly concur with UPLC that BPL-enabled Internet access service is functionally similar to cable modem and DSL, such that it should be classified as an information service. Conversely, none of the comments in opposition challenge the basic premise that BPL offers Internet access as a finished service that inextricably intertwines data transport and information processing capabilities. As such, the Commission should declare that BPL-enabled Internet access service is an information service based on its functional similarity with cable modem and DSL, consistent with its overriding policy of regulating like services in a similar manner. It should also expressly clarify that BPL-enabled Internet access service is an interstate service and that it does not include a separate transmission component.

IV. THE COMMISSION CAN AND SHOULD MAKE THE REQUESTED DECLARATORY RULING BASED ON THE EXISTING RECORD

The chorus of support of UPLC's Petition is even greater concerning the underlying public policy reasons for classifying BPL-enabled Internet access service as an information service. Duke and Cinergy, which have deployed BPL both on a commercial and trial basis, assert that the public interest would be served by classifying BPL-enabled Internet access service as an information service because it would promote facilities-based broadband access and competition, and improve electric service and homeland security.¹⁶ San Diego Gas and Electric agrees with Duke and Cinergy that the "[i]ntroduction of a third facilities-based broadband service will benefit consumers by increasing competition in the market for broadband service, which will result in lower rates and enhanced technical innovation." FirstCom echoes these public policy benefits.¹⁷

There are several reasons why declaratory relief is needed now. As San Diego Gas and Electric explained from first-hand experience, "the current regulatory uncertainty has hampered development of the service and has delayed the availability of these benefits," because the

¹⁶ Comments of Duke Energy Corporation and Cinergy Broadband Corporation in WC Docket No. 04-37 at 2-3 (filed Feb. 10, 2006).

¹⁷ Comments of First Communications, LLC at 7.

economics of deploying BPL “depends fundamentally upon establishing certainty concerning the applicable regulatory framework,” as well as on “ensuring that BPL is not disadvantaged in terms of the regulatory burden imposed upon this service.”¹⁸ Moreover, BPL is a nascent technology, and it must compete with cable modem and DSL that currently control 92% of the market.¹⁹ Removing regulatory uncertainty will allow BPL providers to make “more predictable judgments regarding how to deploy BPL technologies.”²⁰ Conversely, “[i]nvestments will not be made if the profit potential is unknown or limited due to government regulation.”²¹ Classifying BPL-enabled Internet access service as an information service will provide needed regulatory certainty that will promote investment in and deployment of BPL, and it will provide a level playing field for BPL to compete with DSL and cable modem.

Given the advent of commercial deployment of BPL, there is an urgent need for regulatory certainty for BPL-enabled Internet access service, which the Commission should recognize. Utilities and BPL

¹⁸ Comments of San Diego Gas & Electric at 5.

¹⁹ *See* Comments of TIA at 3-4 (“while the broadband market remains relatively nascent, market entry is nonetheless expensive and risky. This is compounded by the fact that BPL technology essentially remains untested in terms of large scale deployments.”) *See also* Comments of San Diego Gas & Electric Company at 5 (“BPL is a nascent technology competing with entrenched providers that currently control 92% of all advanced services lines.”)

²⁰ Comments of First Communications at 7.

²¹ Comments of Progress Energy at 2.

operators are eager to deploy BPL, and the public interest would be promoted through the deployment of BPL. That is why a declaratory ruling classifying BPL-enabled Internet access service as an information service is necessary and appropriate. As described above and more fully in UPLC's comments, the FCC can make this declaratory ruling based on the existing record. Any delay would deprive consumers of the benefits of BPL, and further proceedings would be a waste of administrative resources, given the extensive record that has been already developed. Therefore, the UPLC respectfully urges the Commission to reject efforts to delay this proceeding. Instead, the Commission should issue a declaratory ruling classifying BPL-enabled Internet access service as an interstate information service as soon as possible.

WHEREFORE, THE PREMISES CONSIDERED, the UPLC respectfully requests that the FCC declare that BPL-enabled Internet access service is an interstate information service, consistent with the *Cable Modem Declaratory Ruling* and the *DSL Order*.

Respectfully submitted,

UPLC

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